2017 IL App (1st) 162925-U

No. 1-16-2925

Third Division
September 27, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff-Appellant, v. DASMON D. POINDEXTER, and WILLIAM C. POINDEXTER, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 14 M1 10188 Honorable Mary R. Minella, Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Directed verdict for defendants affirmed where plaintiff failed to present evidence that either of the named defendants was the proximate cause of the alleged accident.

¶ 2 Plaintiff State Farm Mutual Automobile Insurance Company (State Farm) appeals from the trial court's order granting a directed verdict for defendants Dasmon D. Poindexter and William C. Poindexter after the close of State Farm's case-in-chief. State Farm contends the

directed verdict was granted in error because sufficient evidence was presented for a reasonable jury to deliver a verdict in its favor. We affirm.

¶ 3 BACKGROUND[1]

¶ 4 On March 14, 2014, State Farm filed suit in the Cook County circuit court in subrogation of a claim for its insured, Yolanda Phillips. The complaint alleged that on March 18, 2011, the defendants, individually or through an authorized agent, acted negligently in striking Phillips' vehicle with their own vehicle. A six-person jury was empanelled and the case proceeded to trial on December 11, 2015. Although Dasmon was present at trial, William was not. State Farm presented three witnesses: Phillips, Henry Pierce, a passenger in Phillips' vehicle at the time of the accident, and Hector Ramos, a claims representative for State Farm.

¶ 5 Phillips testified that, on the date of the accident, she was driving southbound on Halsted Street in Chicago, Illinois, at approximately 20-25 miles per hour. As she approached the traffic light at the intersection of Halsted and 85th Street, she applied her brakes. Phillips did not recall what color the traffic light was displaying at that time. However, she recalled the weather that day was clear, there were no cars in front of or behind her vehicle, and she did not hear any brakes screeching as she decelerated. After applying her brakes, she suddenly felt a hard and heavy impact from the rear.

¶ 6 After the impact, Phillips' vehicle shut down. An individual approached her "saying crazy things" and cursing, but then offered an apology. After the exchange with this individual, Phillips took photos of the rear damage to her vehicle. The photos were identified at trial by Phillips and Pierce.

[1] A court reporter was not present at the trial. Thus, in lieu of the transcript, the court relies on the parties' stipulated statement of facts appended to State Farm's brief. See, Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005).

¶ 7 Pierce's testimony was largely consistent with that of Phillips'. In their testimony, neither Phillips nor Pierce referred to Dasmon or William by name, or to either as the driver of any vehicle involved in the accident. Both Phillips and Pierce referred to the individual only as "the defendant," in the singular.

¶ 8 Ramos testified concerning Phillips' claim filed with State Farm. After Ramos' testimony, State Farm rested. Counsel for the defendants then moved for a directed verdict. After a brief oral argument, the trial court granted the motion and entered judgment against State Farm. State Farm's motion for a new trial was denied and this appeal followed.

¶ 9 ANALYSIS

¶ 10 On appeal, State Farm contends that the trial court erred in granting defendants' motion for a directed verdict. Specifically, State Farm argues that several presumptions of fact were developed from the evidence that would prove a *prima facie* case of negligence and that these presumptions went wholly unchallenged by defendants. Therefore, State Farm asserts that the trial court should have submitted the case to the jury with instructions to consider the presumptions as legal conclusions in conjunction with the evidence presented. Defendants respond that the directed verdict was proper because State Farm's evidence failed to draw any connection between the alleged accident and either defendant. This failure left the jury with no basis, except for speculation, to determine who was responsible for the accident.

¶ 11 We review an order disposing of a motion for directed verdict *de novo*. *Evans v. Shannon*, 201 Ill. 2d 424, 427 (2002). A motion for directed verdict is proper if all of the evidence so overwhelmingly favors the movant that no contrary verdict based on the evidence could ever stand. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225 (2010). Additionally, to reach the jury a plaintiff must present at least some evidence on every

essential element of the cause of action, otherwise, the issue will be resolved as a matter of law. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 123 (2004). A directed verdict is proper when there is no factual question to present to the jury because of the plaintiff's failure to prove a *prima facie* case. *Id*.

¶ 12 A *prima facie* case of negligence requires a showing of duty, breach of duty, and proximate cause. *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 256 (1999). Proximate cause consists of two requirements: a showing that defendant's conduct "was a material element and substantial factor in bringing about the injury," and the injury caused was foreseeable as a likely result of defendant's conduct. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004). Although, generally, proximate cause determinations are reserved for the trier of fact, (*Jones v. Chicago & Northwestern Transportation Co.*, 206 Ill. App. 3d 136, 139 (1990)), absent a genuine dispute over the facts, proximate cause may be determined by the court as a matter of law. *Robinson v. Boffa*, 402 Ill. App. 3d 401, 403 (2010).

¶ 13 State Farm argues that a presumption at law was created that William, as owner of the vehicle, was also the driver. State Farm bases its "presumption of law" argument on a statement made by the trial judge in its written order denying State Farm's motion for a new trial. The court stated that "[b]y way of background Dasmon D. Poindexter was the alleged driver of the vehicle owned by William C. Poindexter." State Farm argues that this presumption acts as a rule of law or legal conclusion because the facts underlying the presumption were unchallenged. See *McElroy v. Force*, 38 Ill. 2d 528, 533 (1967). It then offers *McElroy* and *Scheibel v. Groeteka*, 183 Ill. App.3d 120 (1989) to support reversal.

¶ 14 State Farm appears to rely on the general rule in automobile accidents that proof of ownership implies control of the vehicle at the time of accident. See *Robinson v. Workman*, 9

Ill. 2d 420, 423 (1956). The flaw in State Farm's argument is readily apparent. Even were we to accept that the trial judge's statement, which State Farm takes out of context, could be taken as having established ownership, a basic fact necessary to support the presumption of control, we must also then accept that the trial judge, in the very same statement, rebutted the presumption when she stated that Dasmon was the alleged driver. Moreover, State Farm presented no evidence that William was the owner of the vehicle involved in this accident. Thus, State Farm's presumption of control argument necessarily fails.[2]

¶ 15 Neither can State Farm take refuge in *Scheibel* and *McElroy.* In *Scheibel*, although the plaintiff was unable to identify the defendant as the driver of the vehicle which struck him, he clearly identified the vehicle involved. *Scheibel*, 183 Ill. App. 3d 139-140. Thus, although defendant's identity was in question, based on the plaintiff's identification of the vehicle, control was presumed and the defendant's motion for directed verdict was defeated. Here, no presumption of William's involvement can be established where the witnesses failed to give any description of the vehicle alleged to have been involved in the accident. We note that in the complaint, defendants, plural, were alleged to be in control of the vehicle at the time of the accident, however, there is nothing in the record to indicate that either William or Dasmon owned the vehicle alleged to have been involved in this case.

¶ 16 In *McElroy*, it was unascertainable who was driving at the time of a single-vehicle accident and liability was determined by a jury applying the ownership presumption. *McElroy*, 38 Ill. 2d at 530. The jury was properly instructed to consider the presumption

[2] A presumption is a rule of law requiring the existence of a fact to be taken as established when certain other facts are established, unless and until a certain specified condition is fulfilled. M. Graham, Graham's Handbook of Illinois Evidence, § 301.1 at 128 (ed. 2016). A presumption ceases to operate once there is enough evidence to support a finding of the nonexistence of the presumed fact. *Franciscan Sisters Health Care v. Dean*, 95 Ill. 2d 452, 462-63 (1983).

where the physical evidence was inconclusive and a statute barred the plaintiff—who was the only surviving witness—from testifying. *Id.* at 530-31. Here, State Farm has not been limited by the physical evidence or evidentiary rules, and the prevailing issue is not who was driving the car at the time of the accident. Rather, the issue here is whether there was a second car involved in the accident at all.

¶ 17 State Farm additionally argues that "the testimony presented showed that the damages sustained were to such an extent that they could have occurred, at the very least, in the manner put forward by [State Farm] at trial." To establish proximate cause, the plaintiff bears the burden of "'affirmatively and positively show[ing] that the defendant's alleged negligence caused the injuries for which the plaintiff seeks to recover. *Bermudez v. Martinez Trucking*, 343 Ill. App. 3d 25, 29 (2003), (quoting *McIntrurff v. Chicago Title & Trust Co.*, 102 Ill. App. 2d 39, 48 (1968). Liability cannot be predicated on speculation, surmise, or conjecture. *Wiegman v. Hitch–Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 795–96 (1999). Proximate cause can only be established when there is a reasonable certainty that the defendant's acts or omissions caused the complained of injury. *Mann v. Producer's Chemical Co.*, 356 Ill. App. 3d 967, 974 (2005).

¶ 18 On the record before us, it is impossible to determine what or who caused the damage to Phillips' vehicle. Based on the stipulated facts, prior to the alleged collision, neither Phillips nor Pierce saw cars either in front of or behind them. They heard nothing unusual, such as the screeching of brakes, but they felt a "big hit that was hard and heavy." Common experience would suggest that the impact, as described, was caused by another vehicle following behind Phillips. However, the evidence presented in this case shows the opposite.

¶ 19 *Rahic v. Satellite Air-Land Motor Service, Inc.*, 2014 IL App (1st) 132899 is instructive. The plaintiff in *Rahic* had no memory of how he sustained a head injury while working. *Id.* ¶ 22. He argued that, although evidence regarding the injury was circumstantial, the question of causation required determination by a jury. *Id.* The defendant disclaimed any knowledge of or involvement in plaintiff's injury. *Id.* ¶ 25. The court held it was precluded from finding there was a question of fact, noting, "there is not merely an absence of conflicting evidence but an absence of any evidence. It is as likely [plaintiff] hit his head or fell down as it is that defendants did something to cause the injury." *Id.* ¶ 28.

¶ 20 Like in *Rahic*, we find that there was no question of causation to submit to the jury. Neither party put forth an account of how the damage was caused. State Farm placed "the defendant" on the scene immediately following the accident, but defendants neither affirmed nor denied any involvement. State Farm did not connect "the defendant" to anything that was the likely source of the injury. Like in *Rahic*, although there is no conflicting evidence in the record, there is also no evidence to show whether defendants caused the damage to Phillips' vehicle.

¶ 21 State Farm argues that the testimony about "the defendant's" remarks and proximity to the scene of the accident created a presumption that "the defendant" was the cause of the accident. We find the argument unpersuasive. The record is devoid of any evidence showing that "the defendant" was in a vehicle, let alone driving one behind Phillips. As discussed above, even if "the defendant's" apology could be viewed as an acknowledgement of some involvement in the accident, causation would still be speculative. State Farm's evidence failed to demonstrate that "the defendant's" conduct caused the damage at issue. Thus, it has failed to meet its burden on the element of proximate cause.

¶ 22 In further support of its contention, State Farm lastly argues that the trial court improperly stepped into the role of the jury. It argues that even though no witness specifically named Dasmon as the tortfeasor, it was an entirely reasonable inference for the jury to infer that the reference to "the defendant" was a reference to Dasmon, who was the only one of the two defendants present during the trial. State Farm maintains that the trial court's finding that no individual had been named by the plaintiffs' witnesses was a judgment "of the weight of the testimony and not its overall admissibility."

¶ 23 We note initially that earlier in its brief, State Farm asserted that because William was the owner of the vehicle allegedly involved in the accident, there was a presumption that William was "also the driver" of that vehicle. Yet here, in its final argument, State Farm asserts that the jury could infer that reference at trial to "the defendant" was to Dasmon. If State Farm's argument can support any conclusion at all, it is simply this, not only has it failed to meet its burden to show proximate cause, but because it failed to prove which of the two named defendants was the driver of the vehicle alleged to been involved in the accident, it failed also to prove the element of duty. See *Cheverrie v. Gruesen* (1991), 208 Ill. App. 3d 881, 884 (every motorist has a duty to decrease speed when approaching and crossing an intersection; speed must be decreased as necessary to avoid colliding with any person or another vehicle); see also 625 ILCS 6/11-601(a) (West 2010). Moreover, even if the jury could have inferred that "the defendant" was Dasmon, no inference could be drawn that he, and not William, was the driver, or that the William's vehicle, which no witness saw behind Phillips, was, nevertheless, involved in the accident.

¶ 24 CONCLUSION

¶ 25 State Farm has failed to satisfy its burden to show that either defendant, Dasmon or William, was the proximate cause of the claimed damage to Phillips' vehicle. Based on the evidence presented, the trial court's grant of defendant's motion for directed verdict was proper. For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.